

Senate Bill 461

By: Senators Harp of the 29th, Hamrick of the 30th, Smith of the 52nd, Cowser of the 46th and Ramsey, Sr. of the 43rd

AS PASSED

A BILL TO BE ENTITLED
AN ACT

To amend Article 6 of Chapter 4 of Title 53 of the Official Code of Georgia Annotated, relating to construction of wills and testamentary gifts, so as to provide for the construction of wills and trust instruments referring to federal estate and generation-skipping transfer tax laws for testators and settlors dying on or after December 31, 2009, but prior to January 1, 2011; to provide for judicial construction of such wills and trust instruments; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 6 of Chapter 4 of Title 53 of the Official Code of Georgia Annotated, relating to construction of wills and testamentary gifts, is amended by adding a new Code section to read as follows:

"53-4-75.

(a) For purposes of this Code section, the term 'effective date for federal estate and generation-skipping transfer taxes' means the earlier of January 1, 2011, or the first date after December 31, 2009, including a date before the date on which this Code section became effective, upon which the federal estate tax and generation-skipping transfer tax laws apply to estates of decedents dying on such date and to generation-skipping transfers on such date.

(b) A provision of a will or trust instrument of a testator or settlor dying after December 31, 2009, and before the effective date for federal estate and generation-skipping transfer taxes that:

(1) Refers to the 'federal estate tax,' 'gross estate,' 'unified credit,' 'estate tax exemption,' 'applicable exemption amount,' 'applicable credit amount,' 'deduction,' 'charitable deduction,' 'value for federal estate tax purposes,' 'federal generation-skipping transfer tax,' 'generation-skipping transfer,' 'applicable exclusion amount,' 'generation-skipping

transfer tax exemption, 'GST exemption, 'skip person, 'direct skip, 'transferor, 'marital deduction, 'maximum marital deduction, 'unlimited marital deduction, or any similar provision of the federal estate or generation-skipping transfer tax laws;

(2) Refers to any chapter or section of the Internal Revenue Code of 1986 relating to the federal estate tax or generation-skipping transfer taxes or to terms defined or used in such chapters or sections; or

(3) Provides for determining the amount of a bequest, distribution, allocation, or division of property of an estate or trust based on the amount that is exempt from or can pass free of federal estate tax or federal generation-skipping transfer tax

shall be deemed to refer to the federal estate and generation-skipping transfer tax laws as such laws applied to estates of decedents dying on December 31, 2009, and to generation-skipping transfers on December 31, 2009.

(c) Subsection (b) of this Code section shall not apply to:

(1) A provision of a will or trust instrument that is executed or amended after December 31, 2009; or

(2) A provision of a will or trust instrument, whenever executed or amended, that manifests an intention that such provision should be construed in a manner other than as provided in subsection (b) of this Code section.

(d) A court may construe a will or trust instrument to determine whether subsection (b) of this Code section applies to a provision of a will or trust instrument or whether the will or trust instrument manifests an intention that such provision should be construed in a manner other than as provided in subsection (b) of this Code section. A petition for construction of a will or trust instrument under this Code section may be filed by the personal representative, beneficiary, or trustee and shall be commenced within one year of the death of the testator or settlor."

SECTION 2.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.